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August 16, 2021

Via ECFS

Marlene H. Dortch, Secretary
Federal Communications Commission
45 L Street, NE
Washington, DC 20554

Re: Rural Digital Opportunity Fund (Auction 904), Long Form Applications of Consolidated Communications of Texas Company and Consolidated Communications of Northern New England Company
WC Docket Nos. 10-90 and 19-126; AU Docket No. 20-34

Dear Ms. Dortch:

On July 26, 2021, Consolidated Communications received two letters from the Commission's Michael Janson, Director, Rural Broadband Auctions Task Force; Kris Monteith, Chief, Wireline Competition Bureau; and Giulia McHenry, Chief, Office of Economics and Analytics (the "Letters"), concerning twelve census blocks included in its above-referenced affiliates' Rural Digital Opportunity Fund ("RDOF") long-form applications, for which Consolidated Communications was the successful bidder in Auction 904. Citing questions raised by the Competitive Carriers Association¹ as to whether these census blocks are already served by one or more service providers that offer 25/3 Mbps broadband service or otherwise raise significant concerns about wasteful spending of RDOF funds, the Letters, at 1, ask Consolidated Communications to "conduct due diligence to ensure that you can meet the Rural Digital Opportunity Fund public interest obligations."

With the information available, Consolidated Communications is unable to determine conclusively either that there are no eligible locations in these twelve census blocks, or that locations in those census blocks were served by voice and 25/3 Mbps broadband service prior to the cutoff date established by the Commission for Auction 904 eligibility. Consolidated Communications has confirmed that neither it nor any other terrestrial provider reported 25/3 Mbps service in any of these twelve census blocks in the Commission's December 31, 2019 Form 477 dataset, nor were they the subject of a successful challenge before the start of Auction 904.² Consolidated Communications cannot, of course, retroactively verify whether any

¹ See Letter from Alexi Maltas, SVP & General Counsel, Competitive Carriers Association, *et al.*, WC Docket No. 19-195 *et al.* (filed May 6, 2021) ("CCA *Ex Parte* Letter").

² See Public Notice, AU Docket No. 20-34, WC Docket Nos. 19-126 and 10-90, "Wireline Competition Bureau and Office of Economics and Analytics Release Updated List and Map of Eligible Areas for

unreported 25/3 Mbps service was in fact available from another service provider in any of these census blocks in 2019.

The Commission's June 30, 2020 Form 477 data show that two of the twelve census blocks have now been reported as served, at least in part: Census Block ID 330150675011039 in New Hampshire (Comcast), and Census Block ID 481576731011162 in Texas (Skybeam LLC). With broadband deployment continuing apace across the nation, it is likely that many other census blocks included in Auction 904 have also become served at a speed of 25/3 Mbps or greater since the areas eligible for Auction 904 were established. The Wireline Competition Bureau has already determined that such subsequent developments should have no bearing on Auction 904 eligibility, results, or awards of support.³

The *CCA Ex Parte Letter* relies chiefly on publicly available speed test data generated by users of Ookla's speedtest.net service in the fourth calendar quarter of 2019. CCA explains that Ookla does not make these data available for individual census blocks, but rather, based on a unique system of geographic "tiles" used to approximate the geographic location of a speedtest.net user.⁴ At best, therefore, these data are indirect evidence of the availability of broadband internet access service in the approximate vicinity of a given census block. At the same time, they also contravene certified Form 477 data showing a lack of such service, which the Commission has deemed reliable.⁵ Given that ambiguity, and based on Commission precedent, Consolidated Communications cannot conclude at this time that it would best serve the public interest by defaulting on its bids in these twelve census blocks.⁶

the Rural Digital Opportunity Fund Phase I Auction," DA 20-665, 35 FCC Rcd 6499 (Wir. Comp. Bur. 2020) ("*Census Block Challenge Public Notice*"); *Ex Parte Letter* from B. Lynn Follansbee, Vice President, Policy & Advocacy, USTelecom – The Broadband Association, and Michael Romano, Senior Vice President, Industry Affairs & Business Development, NTCA – The Rural Broadband Association, WC Docket Nos. 10-90 and 19-126, AU Docket No. 20-34 (filed Aug. 13, 2021), at 2. ("*USTelecom-NTCA Ex Parte Letter*").

³ See *Rural Digital Opportunity Fund*, WC Docket No. 19-126, Report and Order, FCC 20-5, 35 FCC Rcd 686 (2020) ("*RDOF Order*"), at ¶ 14 (observing that "there is an inevitable lag between the time when areas are served and the time that service is reflected in publicly available FCC Form 477 data"); *Census Block Challenge Public Notice* at 2 (excluding challenged census blocks where certified Form 477 data showed voice and broadband service as of Dec. 31, 2019); *The Rural Digital Opportunity Fund Phase I Auction (Auction 904)*, AU Docket No. 20-34, Order, DA 20-1174, 35 FCC Rcd 11288 (Wir. Comp. Bur. 2020), at ¶ 18, 21 (maintaining RDOF eligibility for census blocks where *untimely* Form 477 data showed voice and broadband service were available as of Dec. 31, 2019, and for census blocks covered by a May 2020 state broadband deployment grant award) ("*RDOF Challenge Reconsideration Order*").

⁴ *CCA Ex Parte Letter*, Attachment at 5.

⁵ See, e.g., *RDOF Order* at ¶ 10 ("[W]e are not aware of cases in which the [Form 477] data have identified as 'unserved' a census block that is in fact served.").

⁶ *RDOF Challenge Reconsideration Order* at ¶ 18 ("[T]he Commission also aims to not readily exclude areas unless verifiable data support their exclusion, because the effects of depriving those areas of broadband funding are both long-term and significant.").

Rather, Consolidated Communications expects that it will be able to fulfill its RDOF public interest obligations under Section 54.805 of the Commission’s rules and Section 254(e) of the Communications Act of 1934, as amended, without defaulting on its bids in any of these twelve census blocks.⁷ Section 54.805 establishes latency, usage, speed tier, and E-Rate category one bidding requirements associated with RDOF support, with which Consolidated Communications expects to comply. In any event, as explained in the *USTelecom-NTCA Ex Parte Letter*, the arguments in the *CCA Ex Parte Letter* are unrelated to those public interest requirements.⁸

Section 254(e) requires recipients to use universal service support “only for the provision, maintenance, and upgrading of facilities and services for which the support is intended.”⁹ In the case of RDOF, the Commission is awarding support to providers that commit to offer qualifying voice and broadband service to a specific number of customer locations in eligible census blocks. The Commission has established deployment milestones based on those numerical counts of eligible locations in the census blocks won by each bidder, and will determine compliance at the state level.¹⁰ Consolidated Communications expects that it will be able to serve the required number of locations, in the aggregate statewide, without deploying or counting service to locations in urban business districts, tourist attractions, international airports, parking lots, or other similar areas.¹¹ Emphatically, deploying qualifying voice and broadband service to the full number of customer locations covered by Consolidated Communications’ Auction 904 commitment will serve the purpose for which the support is intended, as well as the broader public interest.

Moreover, the Commission has already ensured that RDOF support will not be wasted in such a fashion. In designing the RDOF, the Commission acknowledged that the location counts associated with eligible census blocks in Auction 904 are based on 2011 Census data used in the Connect America Cost Model (“CAM”), and that those counts may no longer accurately reflect current conditions. The Commission therefore established a “true-up” process to incorporate newer and more accurate locations counts at milestone year 6.¹²

⁷ See Letters at 1 (citing 47 C.F.R. § 54.805 and 47 U.S.C. § 254(e)).

⁸ See *USTelecom-NTCA Ex Parte Letter* at 2, n.6.

⁹ 47 U.S.C. § 24(e).

¹⁰ *RDOF Order* at ¶¶ 45; see also Public Notice, AU Docket No. 20-34, WC Docket Nos. 19-126 and 10-90, “Rural Digital Opportunity Fund Phase I Auction Scheduled for October 29, 2020; Notice and Filing Requirements and Other Procedures for Auction 904,” FCC 20-77, 35 FCC Rcd 6077 (2020), at ¶ 19.

¹¹ *CCA Ex Parte Letter* at 2.

¹² *RDOF Order* at ¶¶ 49-51; *USTelecom-NTCA Ex Parte Letter* at 2-3.

Thank you for the opportunity to consider these questions, and please feel free to contact me if you should have any additional questions. We would be pleased to discuss this matter in further detail.

Very truly yours,

/s/ Michael J. Shultz

Michael J. Shultz
Senior Vice President
Regulatory & Public Policy

cc: Michael Janson
Kris Monteith
Giulia McHenry